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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8194 of 1990

with

SPECIAL CIVIL APPLICATION No. 7269 of 1991

with

SPECIAL CIVIL APPLICATION No. 7238 of 1991

with

SPECIAL CIVIL APPLICATION No. 1507 of 1992

with

SPECIAL CIVIL APPLICATION No. 6505 of 1992

with

SPECIAL CIVIL APPLICATION No. 1286 of 1993

with

SPECIAL CIVIL APPLICATION No. 1287 of 1993

with

SPECIAL CIVIL APPLICATION No. 9870 of 1994

with

SPECIAL CIVIL APPLICATION No. 9908 of 1994

with

SPECIAL CIVIL APPLICATION No. 82 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

C S PRAJAPATI

Versus

OIL & NATURAL GAS COMMISSION

Appearance:

MR AK CLERK for Petitioner
SERVED BY RPAD - (R) for Respondent No. 1
MR JM THAKORE ADVOCATE GENERAL with
MR RAJNI H MEHTA for Respondent No. 2&3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/10/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. This group of 10 writ petitions under Article 226 of the Constitution of India have been preferred by 21 employees of the Oil & Natural Gas Commission [now Oil & Natural Gas Corporation Limited], the respondent no. 1 herein [hereinafter referred to as, 'the Commission']. All the petitioners had entered the service of the Commission as Junior Assistants. Some of the petitioners have retired/resigned/died before the date of the petition. Others have retired from service pending these petitions. All the petitioners rely upon the orders dated 12th March, 1990, 19th February, 1991 and 20th February, 1991 made in favour of one Shri R.A Parmar and claim the similar relief. Thus, all these petitions involve identical questions of law and are, therefore, decided by this common judgment. The facts leading to the present petitions are as under :-

3. Prior to the year 1962, the Commission had a common cadre of Junior Assistants and of Senior Assistants for the purpose of seniority, transfer, promotion, etc. On 5th July, 1962, in view of the increase in the activities of the Commission's finance and accounts organisation and with a view to providing suitably qualified personnel having necessary knowledge and experience of accounts work, it was decided that the account and finance organisation shall constitute a separate Wing in so far as recruitment, promotion, transfer, etc. were concerned. The cadre of senior assistants and junior assistants were redesignated as senior Accounts Assistants and Junior Accounts Assistants. Under the Office Order dated 5th July, 1962, the eligibility for appointment to the post of Senior Accounts Assistant as well as Junior Accounts Assistant were also prescribed. The senior/junior assistants

working in the Finance & Accounts Organisation at the relevant time were allowed to exercise the option to remain in the organisation and to be designated as Senior or Junior Accounts Assistant. It was also decided that for the purpose of seniority, their entire service with the Commission shall be taken into consideration. The said Office Order was followed by the communication dated 1st July, 1967 whereunder the concerned General Manager was given detailed instructions as regards the implementation of the Office Order dated 5th July, 1962. On 13th October, 1967, an Office Memorandum was issued setting out the principle of seniority in case of absorption of employees from one cadre to the other. It was decided, inter alia, that, 'if as a very special case they are to be considered for absorption in the cadres to which they are temporarily transferred, their seniority should count only from the date of transfer to the cadre in which they are actually working [at the time their absorption is considered] so as not to prejudice the rights and seniority of the personnels already recruited/promoted to these cadres.' Under the Office Order dated 22nd January, 1968, certain works were transferred from Establishment Section to PCS Section and the persons actually working on the said works were transferred from Establishment to Accounts Section with immediate effect. Under the said Order, one Shri R.A Parmar, then working as Assistant Grade-II also came to be transferred from the Establishment Section to Accounts Section alongwith the works transferred to PCS Section. Having been transferred to the Accounts Section, the said Shri Parmar on 30th January, 1968 made an application to permanently absorb him as Accounts Assistant and gave his option to be absorbed in the Accounts Section. He also demanded that his seniority be determined from the date of joining the Commission. The Commission, however, relied upon the Office Order dated 13th October, 1967 referred to hereinabove and refused to determine the seniority of said Shri Parmar in the Accounts Section from the date of joining. The said Shri Parmar was accordingly advised under the Memorandum dated 6th August, 1968. Feeling aggrieved, said Shri Parmar raised an industrial dispute. After a round of litigation on preliminary issue, the dispute was referred to the Central Government Industrial Tribunal, Ahmedabad and was registered as Reference (ITC) No. 13 of 1985. The said reference was decided by the learned Tribunal under its judgment and award dated 12th February, 1987. Under the said judgment, the learned Tribunal held that said Shri Parmar was entitled to exercise his option pursuant to the Office Order dated 5th July, 1962. Under the said judgment, the learned Tribunal found that under the

Office Order dated 5th July, 1962 only those junior/senior Assistants were offered options who were actually serving in the Finance & Accounts discipline. The Court held that the action was arbitrary and all the junior/senior assistants who formed the common cadre of junior/senior assistants ought to have been given an option either to remain in the main stream or to opt for Finance & Accounts discipline. This having not been done, said Shri Parmar was deprived of his right to be transferred to the Finance & Accounts Section alongwith the seniority from the date of joining the Commission. The learned Tribunal, therefore, directed that said Shri Parmar be absorbed in the Accounts Wing and his seniority be fixed in that Wing. Considering his entire service in the Commission, he should be placed above one Mr. Dave. In consequence, his promotional dates be adjusted so that he would get all the benefits as in the case of Shri D.K Dave and the difference of pay, etc. be paid. The aforesaid judgment and award was challenged by the Commission before this Court in Special Civil Application No. 2715 of 1987 which came to be dismissed on 19th June, 1987. While dismissing the petition, the Division Bench of this Court directed that if the regulations provide any exemption to be granted on the discretion of the petitioner Commission, such a benefit of exemption must be given by the petitioner in favour of Mr. Parmar exempting him from appearing at any examination or test for promotion. Feeling aggrieved, the Commission preferred Civil Appeal No. 3498 of 1988 before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the said appeal and under its Order dated 3rd October, 1988 reversed the direction issued by the High Court in respect of grant of exemption and instead issued the direction to the Commission to consider the case of said Shri Parmar for granting exemption from appearing at any examination or test for promotion in accordance with law. On behalf of the Commission, it was also urged that the Order of the High Court should be confined to said Shri Parmar alone. The said contention was answered by the learned counsel appearing for the said Shri Parmar by stating that, 'the order of the High Court may be treated as one made in favour of Mr. R.A Parmar only, and that only if it becomes necessary to hear any other person or persons in order to determine the seniority of Mr. R.A Parmar such person or persons may also be heard.' In view of the said statement made by the learned counsel, the Hon'ble Supreme Court observed that, 'no further direction is necessary in this regard, the judgment of the High Court stands accordingly modified.' Pursuant to the above judgments, the case of said Shri Parmar for absorption in Accounts Section alongwith his seniority

and for further promotion in the Accounts Section was considered by the Commission. The Commission having thus considered the case of said Shri Parmar made the above referred orders dated 12th March, 1990, 19th February, 1991 and 20th February, 1991. Under the said Orders, said Shri Parmar was absorbed in the Finance & Accounts Wing as senior Accounts Assistant with effect from 19th January, 1962 and was also given the benefit of deemed promotion to the post of Junior Accountant. In the concerned seniority list, he was placed above Shri D.K Dave. He was also given the benefit of exemption from passing the requisite examination/test and was given deemed date of promotion to the post of Deputy Director (F&A). His pay was accordingly revised and was ordered to be paid the amount of difference in salary.

4. Pending the above litigation, some of the employees of the Commission; three of whom are the writ petitioners No. 2,3 and 4 in Special Civil Application No. 7269 of 1991 preferred Special Civil Application No. 1544 of 1972 before this Court and claimed similar relief as claimed by Mr. Parmar. In course of hearing, learned counsel appearing for the Commission on 22nd March, 1973 made a statement that, 'the case of the petitioners and the like persons will be considered a fresh after the final decision in the industrial dispute Reference No. IT/186/1970, pending in that court and if the petitioners and the like fell squarely within the ratio of the decision, they will be given like benefits.' In view of the above statement, the said petitioners withdrew the petition. Since then, one Mr. C.S Prajapati, the writ petitioner in Special Civil Application No. 8194 of 1990 and some others preferred Special Civil Application No. 2094 of 1978 for similar reliefs. Under the judgment and order dated 12th October, 1978, the claim made by those writ petitioners was found to be grossly delayed. However, in view of the industrial dispute pending before the Tribunal and the statement made in Special Civil Application No. 1544 of 1972, the Court held that those writ petitioners were justified in not approaching the Court under the aforementioned circumstances. The Court still did not entertain the petition in view of the Tribunal being seized of the matter at dispute.

5. The petitioners claim that they are all situated similarly as above referred Shri Parmar and, in view of the statement made by the Commission in Special Civil Application No. 1544 of 1972, are entitled to be considered for absorption in the Finance & Accounts Wing and for further promotion just as in the case of Mr. Parmar. It is the claim of the petitioners that it was

the duty of the Commission to consider the case of all the petitioners and to grant the benefit as in the case of Shri Parmar. However, the Commission has failed to fulfill its statement made before this Court. The representation made by various petitioners in this regard have not been responded to. Therefore, the petitions.

6. Mr. Clerk has submitted that the petitioners and others were discriminated inasmuch as they were not offered option either to remain in the main stream or to opt for Finance & Accounts Wing in the year 1962. The said benefit ought to be conferred by the Commission pursuant to the statement made by it. He has submitted that it was a fortuitous circumstance that the petitioners at the relevant time were posted on administrative work while some others were performing the accounts work. Similarly, in the year 1967, some others like Shri Parmar got an opportunity to be transferred to Accounts Wing on a fortuitous circumstance of the transfer of the work they were performing to the PCS section. Such fortuitous circumstances have placed some others to an advantage while the petitioners were deprived of such advantage for no cogent reason. As held by the Tribunal and confirmed by this Court as well as the Hon'ble Supreme Court, the petitioners were wrongly deprived of the option to join the Finance & Accounts Wing. Such deprivation has adversely affected their chance of further promotion. Further, in view of the statement dated 22nd March, 1973 and the order of this Court made on Special Civil Application No. 2094 of 1978, the petitioners were wholly justified in waiting till the final result of the case of Shri Parmar and in not raising the dispute earlier. The petitioners' claim, therefore, cannot be rejected on the grounds of delay and latches or of being stale.

7. The petitions are contested by the Commission. Learned Advocate General has submitted that the Commission had bound itself to consider the case of all the like persons, if their cases fell squarely within the ratio of the decision. He has submitted that neither of the petitioners has laid factual foundation to establish that his case falls squarely within the ratio of the decision. Besides, there is a gross delay inasmuch as the petitioners have approached this Court not only long after the cause of action but also years after the decision of the Hon'ble Supreme Court.

8. The questions that arise for my consideration are - whether the cases of the petitioners fall squarely within the ratio of the decision of the Tribunal and

whether their claims are belated.

9. The undisputed facts relevant for the purpose are :-

- (A) Shri R.A Parmar was originally recruited as a Sr. Assistant in the then common cadre of Sr. Assistants.
- (B) Though he was not offered option to come over to the Finance & Accounts Wing in the year 1962, he was transferred to Finance & Accounts Wing alongwith some work on 22nd January, 1968.
- (C) Upon his transfer to Finance & Accounts Wing, said Shri Parmar on 30th January, 1968 gave his option for being absorbed in the Finance & Accounts Wing and requested the Commission to fix his seniority with effect from the date of joining the Commission i.e., with effect from 19th January, 1962.
- (D) The Commission, under its Memorandum dated 6th August, 1968, advised said Shri Parmar that his seniority in Finance & Accounts Wing would be considered from the date of transfer and that he may reconsider his decision to remain in Finance & Accounts Wing.
- (E) Neither of the petitioners herein had been offered option either to remain in the main stream or to opt for Finance & Accounts Wing.
- (F) Neither of the petitioners herein had claimed option at the relevant time or raised an objection in that respect.
- (G) Neither of the petitioners was ever transferred to Finance & Accounts Wing nor any of them at any time had given option for absorption in the Finance & Accounts Wing.
- (H) Except four writ petitioners, referred to hereinabove, neither of the petitioners had ever raised any dispute in this regard nor any of them had lodged claim for being absorbed in Finance & Accounts Wing.
- (I) Neither of the petitioners herein has passed requisite departmental examination/test given by the Commission for being eligible for further

promotion in Finance & Accounts Wing.

10. It is undoubtedly true that all the petitioners herein are similarly situated as Mr. Parmar inasmuch as they were recruited in the common cadre of Assistants and they were not offered option under the Office Order dated 5th July, 1962. It is also true that the learned Tribunal in its judgment dated 12th February, 1987 has held that such an option ought to have been offered to all the personnel belonging to the common cadre of Assistants. However, can these factors alone be said to be sufficient for granting relief to the present petitioners or for holding that the Commission has failed to respect its statement made before this Court on 22nd March, 1973 in Special Civil Application No. 1544 of 1972. I am of the view that these factors alone do not make the petitioners similarly situated as Mr. Parmar. As referred to hereinabove, not only Mr. Parmar belonged to the common cadre of the Sr. Assistants, he in fact had been transferred to the Finance & Accounts Wing and had also given his option for being absorbed in the Finance & Accounts Wing. The only dispute was in respect of the determination of his seniority in the Finance & Accounts Wing. Be it noted that neither of the petitioners herein had ever objected to the option not being given to them in the year 1962 or in the year 1967 nor have they claimed such option or have given such option at any time during the entire service career. Even in these petitions, neither of the petitioners has averred that had such option been given to them, they would have exercised the option to be absorbed in the Finance & Accounts Wing. It is obvious that having realized that the promotions in the Finance & Accounts Wing were speedier than in the Administrative Wing, a claim had been lodged by three of the writ petitioners in the year 1972 and by one of them, in the year 1978. Rest of the petitioners have not lodged such a claim until after Shri Parmar succeeded in his litigation and was given consequential benefits thereof. Most of the petitions are filed long after the decision of the Supreme Court and also after the consequential benefits were conferred upon Mr. Parmar, in the year 1990 and in 1991. In these circumstances, I am of the view that neither of the petitioners can be said to be similarly situated as Shri Parmar and none of them is entitled to the relief prayed for. Further, except for the four petitioners, who had earlier preferred writ petitions being Special Civil Application No. 1544 of 1972 and Special Civil Application No. 2094 of 1978, rest of the claims are grossly belated and cannot be entertained on that ground also.

11. There are some more reasons why the claims made by some of the petitioners cannot be accepted. Six of the petitioners i.e., petitioners in Special Civil Application No. 82 of 1995; the petitioner in Special Civil Application No. 9870 of 1994; the petitioner no. 7 in Special Civil Application No. 7269 of 1991; the petitioner No. 1 in Special Civil Application No. 1507 of 1992 and the petitioner in Special Civil Application No. 9908 of 1994 all have preferred these petitions long after their retirement, either voluntary or on superannuation, from service. The petitioner in Special Civil Application No. 7238 of 1991 had resigned from service with effect from 2nd August, 1986. Thus, the above petitioners have for the first time raised the dispute in respect of their absorption in Finance & Accounts Wing, after their retirement or resignation from service i.e., after the severance of the master and servant relationship. None of these claims is, therefore, tenable. The petitioner No. 3 in Special Civil Application No. 1507 of 1992 are the heirs and legal representatives of Late Shri K.S Joshi, who passed away on 12th April, 1990. The said Shri K.S Joshi, in his life time, did not raise dispute in respect of the option given on 5th July, 1962 nor did he claim a right to be so absorbed during his life time. The right to option, promotion, etc. are purely personal rights and if the servant concerned had not claimed such a right in his life time, his heirs or legal representatives have no right to claim such a right after the death of such servant. The said respondent no. 3, therefore, in my opinion have no locus standi to bring this petition. Further, the petitioner no. 1 in Special Civil Application No. 82 of 1995; the petitioners Nos. 6,7 and 8 in Special Civil Application No. 7269 of 1991 and the petitioner in Special Civil Application No. 9908 of 1994 had entered the service of the Commission after 5th July, 1962 i.e. on the date of bifurcation of the common cadre into Accounts and Administrative Wings, the said petitioners were not in service. Obviously, they entered the service of the Commission in its administrative wing and could not have claimed a right to be absorbed in the Finance & Accounts Wing.

12. For the reasons aforesaid, the claim made by the petitioners herein is not tenable. The Commission cannot be said to have failed to respect its above referred statement made on 22nd March, 1973. Neither of the petitioners, therefore, is entitled to the relief claimed. All the petitions are, therefore, dismissed. Rule nisi issued in each of the petitions is discharged.

Parties shall bear their own costs. Copy of this judgment be placed on the records of each of the petitions.

Prakash*